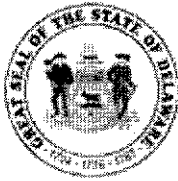


ATTACHMENT K

Attachment K



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TITLE 26

Public Utilities

CHAPTER 10. ELECTRIC UTILITY RESTRUCTURING

§ 1001. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Ancillary services" means services that are necessary for the transmission and distribution of electricity from supply sources to loads and for maintaining reliable operation of the transmission and distribution system.

(2) "Broker" means a person or entity that acts as an agent or intermediary in the sale or purchase of, but that does not take title to, electricity for sale to retail electric customers.

(3) "Commission" means the Delaware Public Service Commission.

(4) "DEC" means the Delaware Electric Cooperative and its successors.

(5) "Direct access" means the right of electric suppliers and their customers to use an electric distribution company's transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the electric distribution company's own use of the system to

transmit or distribute electricity from any electric supplier to any customer.

(6) "Distribution facilities" means electric facilities located in Delaware that are owned by a public utility that operate at voltages of 34,500 volts or below and that are used to deliver electricity to customers, up through and including the point of physical connection with electric facilities owned by the customer.

(7) "Distribution services" means those services, including metering, relating to the delivery of electricity to a customer through distribution facilities.

(8) "DP&L" means Delmarva Power & Light Company and its successors.

(9) "Electric distribution company" means a public utility owning and/or operating transmission and/or distribution facilities in this state.

(10) "Electric supplier" means a person or entity certified by the Commission that sells electricity to retail electric customers utilizing the transmission and/or distribution facilities of a nonaffiliated electric utility, including:

a. Municipal corporations which choose to provide electricity outside their municipal limits (except to the extent provided prior to February 1, 1999);

b. Electric cooperatives which, having exempted themselves from the Commission's jurisdiction pursuant to sections 202 (g) and 223 of this title, choose to provide electricity outside their assigned service territories; and

c. Any broker, marketer or other entity (including public utilities and their affiliates).

(11) "Electric supply service" means the provision of electricity and related services to customers.

(12) "Marketer" means a person or entity that purchases and takes title to electricity for sale to customers in this state.

(13) "Retail competition" means the right of a customer to purchase electricity from an electric supplier.

(14) "Retail electric customer" or "customer" means a purchaser of electricity for ultimate consumption and not for resale in this state, including the owner/operator of any building or facility, but not the occupants thereof, that purchases and supplies electricity to the occupants of such building or facility.

(15) "Standard offer service" means the provision of electric supply service after the transition period by a standard offer service supplier to customers who do not otherwise receive electric supply service from an electric supplier.

(16) "Standard offer service supplier" means an electric supplier that provides standard offer service to customers within an electric distribution company's service territory after the transition period.

(17) "Transition period" means the period of time beginning with the implementation of retail competition and ending on the dates specified in § 1004 of this title.

(18) "Transmission facilities" means electric facilities located in Delaware and owned by a public utility that operate at voltages above 34,500 volts and that are used to transmit and deliver electricity to customers (including any customers taking electric service under interruptible rate schedules as of December 31, 1998) up through and including the point of physical connection with electric facilities owned by the customer.

(19) "Transmission services" means the delivery of electricity from supply sources through transmission facilities. (72 Del. Laws, c. 10, § 3; 73 Del. Laws, c. 157, § 4.)

§ 1002. Standards for electric utility restructuring.

(a) The General Assembly declares that the following interdependent standards shall govern the Commission's review and approval of each public utility's restructuring plan, oversight of the transition process and regulation of the restructured electric utility industry pursuant to this chapter.

(1) The reliability of electric service to all customers in this state shall be maintained.

(2) On and after the implementation dates set forth in § 1003 of this title, customers shall have the right to choose among electric suppliers.

(3) Nothing contained herein shall have the effect of abrogating or amending contracts between public utilities and any of their customers in place on February 1, 1999. (72 Del. Laws, c. 10, § 3.)

§ 1003. Retail competition.

(a) General rule. -- Except as otherwise expressly provided for in this chapter, on and after October 1, 1999 for DP&L and April 1, 2000 for DEC, the generation, supply and sale of electricity, including all related facilities and assets, shall no longer be regulated by the commission as a public utility service or function. Customers of electric distribution companies in this state shall have the opportunity, but not the obligation, to purchase electricity from their choice of electric suppliers in accordance with the implementation dates set forth in subsection (b) of this section.

(b) Implementation dates. --

(1) For customers of DP&L, the implementation dates shall be as follows: October 1, 1999, for customers with a peak monthly load of 1,000 kW or more; January 15, 2000, for customers with a peak monthly load of 300 kW or more; and 18 months after enactment of this chapter for all other customers.

(2) For customers of DEC, the implementation dates shall be as follows: April 1, 2000, for customers with a peak monthly load of 1,000 kW or more; July 1, 2000, for customers with a peak monthly load of 300 kW or more; and 24 months after enactment of this chapter for all other customers.

(c) The Commission may delay any of the above implementation dates for not more than six months for good cause shown and upon a finding that any such delay is in the public interest.

(d) For purposes of this section, peak monthly load shall be measured by the electric distribution company's separate customer account, not by facility or service location or by customer, in the aggregate or otherwise. (72 Del. Laws, c. 10, § 3.)

§ 1004. Transition period.

(a) The transition period for DP&L shall begin on October 1, 1999 and shall end on September 30, 2002 for non-residential customers and shall begin on October 1, 1999, and end on September 30, 2003, for residential customers.

(b) The transition period for DEC shall begin on April 1, 2000, and shall end on March 31, 2005, for all customers. (72 Del. Laws, c. 10, § 3.)

§ 1005. Restructuring plan.

(a) Restructuring plan for DP&L. --

(1) Filing and contents of plan. -- On or before April 15, 1999, DP&L shall file with the Commission a detailed plan for implementing retail competition in DP&L's commission-designated service territory. Such plan shall include:

a. Separate prices or rates for electric supply, transmission, distribution and other services (which may later be combined for billing purposes);

b. Procedures for providing direct access for all electric suppliers;

c. Revised tariffs and rate schedules;

d. An optional residential time of use rate with three daily time of use periods to be available for any residential customer who elects such a rate structure; and

e. Standards for reliability sufficient to measure variations in service reliability after the implementation of retail competition.

(2) Commission review of plan. -- The Commission shall review DP&L's restructuring plan and, after an evidentiary proceeding, issue an order by August 31, 1999, adopting the plan as filed or modifying the plan as appropriate.

(b) Restructuring plan for DEC. --

(1) Filing and contents of plan. -- On or before September 15, 1999, DEC shall file with the Commission a detailed plan for implementing retail competition in DEC's Commission-designated service territory. Such plan shall include:

a. Separate prices or rates for electric supply, transmission, distribution and other services (which may later be combined for billing purposes);

b. Procedures for providing direct access for all electric suppliers;

c. Revised tariffs and rate schedules;

d. DEC's proposed competitive transition charge, including the proposed method, recovery plan and determination of DEC's stranded and transition costs, as such terms are defined in § 1007 of this title; and

e. Standards for reliability sufficient to measure variations in service reliability after implementation of retail competition.

(2) Commission review of plan. -- The Commission shall review DEC's restructuring plan and, after an evidentiary proceeding, issue an order by February 28, 2000, adopting the plan as filed or modifying the plan as appropriate. (72 Del. Laws, c. 10, § 3.)

§ 1006. Rates for customers.

(a) Rates for customers within DP&L's service territory. --

(1) Rates in effect during the transition period. -- For the transition period identified in § 1004(a) of this title, the following Delaware retail rate levels shall be determined by the

Commission (without conducting a base rate case) as part of its decision on DP&L's restructuring plan filed pursuant to § 1005(a) of this title and shall thereafter remain in effect as provided below:

a. The retail market price for electric supply service (including losses to the customer's delivery point) shall be estimated and applied separately for each customer rate class for each year of the transition period. Such prices shall be based upon and/or representative of regional wholesale electric market prices, plus a reasonable allowance for retail margin to be determined by the Commission. Once established, such prices shall not thereafter be changed by the Commission during the transition period, except as the result of an appeal of the Commission's decision.

b. For each customer rate class, the total of the actual base rates (excluding fuel costs) in effect on, and the fuel rates based upon the actual fuel costs for the 12 months ending, September 30, 1999 shall remain in effect for the transition period, less:

1. A base rate decrease of 7.5% percent of the total of those base and fuel revenues for each residential rate class; and

2. The above-specified retail market price in each respective year.

However, upon application by DP&L, the Commission may change rates in the transition period for the recovery of any extraordinary costs as the Commission may, in its discretion, determine.

c. For each customer rate class, the total of the rates established pursuant to subparagraphs a. and b. of this subsection (a)(1) shall be separated (on a revenue-neutral basis) into rates for electric supply, transmission, ancillary, distribution, nuclear decommissioning and other services and may be combined for billing purposes.

d. Customers who obtain transmission and/or ancillary services directly from the PJM independent system operator or from their electric supplier shall receive a credit against DP&L's retail delivery rates equal to the then-applicable

Federal Energy Regulatory Commission equivalent retail transmission and/or ancillary services rates paid by that customer or its electric supplier.

e. For customers who do not choose an alternate electric supplier or have returned to obtaining their electric supply from DP&L, the above-specified retail market price shall be the rate paid for electric supply service for the transition period, subject to such regulations as the Commission may adopt pursuant to § 1010(c) of this title for returning customers.

f. For customers who do choose an alternate electric supplier, the above-specified retail market price shall not be applicable for such customer's electric supply service.

g. In addition to the above-specified rates and charges, and notwithstanding subparagraph b., a deferred fuel true up credit or charge shall be in effect for all customers for up to 12 months following September 30, 1999, pursuant to § 303(c) of this title.

(2) Rates in effect after the transition period. --

a. At the end of the transition period set forth in § 1004(a) of this title, the retail market price under subparagraph (a)(1)a. of this section shall become the standard offer service price.

b. Such standard offer service price shall be the applicable retail market price for electric supply service for any customers who have not chosen an alternate electric supplier or have returned to obtaining their electric supply service from the standard offer service supplier, subject to such regulations as the Commission may adopt pursuant to § 1010(c) of this title for returning customers.

c. If DP&L is a standard offer service supplier, the standard offer service price shall be revised by DP&L from time to time for each customer rate class to be representative of the regional wholesale electric market price, plus a reasonable allowance for retail margin to be determined by the Commission for providing such electric supply service. The standard offer service price may be reviewed from time to time by the

Commission to determine whether it represents the regional wholesale electric market price, plus a reasonable allowance for retail margin. If the Commission has elected another electric supplier to be a standard offer service supplier as the result of the bidding process in § 1010(a)(2) of this title, the standard offer service price shall be the bid price.

d. In addition to the standard offer service price or the alternative electric supplier's supply price, each customer shall pay the separate applicable rates for transmission, ancillary, distribution, nuclear decommissioning and other services. Such rates shall not include any generation or electric supply costs. By March 1, 2002, DP&L shall file a rate case quality cost of service study (consistent with the minimum filing requirements in effect on February 1, 1999) and a proposal to reset its regulated rates to be applicable at the end of the transition periods. The Commission shall review these filings to determine the appropriate rates DP&L may charge its customers for regulated services.

e. Customers who obtain transmission and/or ancillary services directly from the PJM independent system operator or from their electric supplier shall receive a credit against DP&L's retail delivery rates equal to the then-applicable Federal Energy Regulatory Commission equivalent retail transmission and/or ancillary services rates paid by that customer or its electric supplier.

f. To the extent that any nuclear generating unit partially owned by DP&L has been sold, or otherwise disposed of, the nuclear decommissioning costs associated with such unit shall not be recovered from customers after the transition period.

(b) Rates for customers within DEC's service territory. --

(1) Rates in effect during the transition period. -- For the transition period identified in § 1004(b) of this title, the following Delaware retail rate levels shall be determined by the Commission (without conducting a base rate case) as part of its decision on DEC's restructuring plan filed pursuant to § 1005(b) of this title and shall thereafter remain in effect as provided below:

a. The retail market price for electric supply service (including losses to the customer's delivery point) shall be estimated and applied separately for each customer rate class for each year of the transition period. Such prices shall be based upon and/or representative of regional wholesale electric market prices, plus a reasonable allowance for retail margin to be determined by the Commission. Once established, such prices shall not thereafter be changed by the Commission, except as the result of an appeal of the Commission's decision.

b. For each customer rate class, the total of the actual base rates (excluding purchase power costs) and the purchase power rates based upon the actual purchase power costs for the 12 months ending March 31, 2000 shall remain in effect for the transition period less:

1. The above-specified retail market price in each respective year; and

2. The below-specified competitive transition charge in each respective year. However, upon application by DEC, the Commission may change rates in the transition period for the recovery of any extraordinary costs as the Commission may, in its discretion, determine.

c. A competitive transition charge shall be established by the Commission to recover stranded costs and transition costs, if any, pursuant to § 1007 of this title. The competitive transition charge shall be set as a separate charge at a level that will permit DEC to recover its allowed stranded costs and transition costs over the transition period.

d. For each customer rate class, the total of the rates established pursuant to subparagraphs a., b. and c. of subsection (b) of this section shall be separated (on a revenue-neutral basis) into rates for electric supply, transmission, ancillary, distribution nuclear decommissioning, competitive transition charge and other services and may be combined for billing purposes.

e. Customers who obtain transmission and/or ancillary services directly from the PJM independent system operator or from their electric supplier shall receive a credit against DEC's retail delivery rates equal to the then-applicable

Federal Energy Regulatory Commission equivalent retail transmission and/or ancillary services rates paid by that customer or its electric supplier.

f. For customers who do not choose an alternate electric supplier or have returned to obtaining their electric supply from DEC, the above-specified retail market price shall be the rate paid for electric supply service for the transition period, subject to such regulations as the Commission may adopt pursuant to § 1010(c) of this title for returning customers.

g. For customers who do choose an alternate electric supplier, the above-specified retail market price shall not be applicable for such customer's electric supply service.

h. In addition to the above-specified rates and charges, and notwithstanding subparagraph b., a deferred fuel true up credit or charge shall be in effect for all customers for up to 12 months following March 31, 2000, pursuant to § 303(c) of this title.

(2) Rates in effect after the transition period. --

a. At the end of the transition period set forth in § 1004(b) of this title, the retail market price under § 1006(b)(1)(i) of this title shall become a standard offer service price.

b. Such standard offer service price shall be the applicable retail market price for electric supply service for any customers who have not chosen an alternate electric supplier or have returned to obtaining their electric supply service from the standard offer service supplier, subject to such regulations as the Commission may adopt pursuant to § 1010(c) of this title for returning customers.

c. If DEC is a standard offer service supplier, the standard offer service price shall be revised by DEC from time to time for each customer rate class to be representative of the regional wholesale market price, plus a reasonable allowance for retail margin to be determined by the Commission for providing such electric supply service. The standard offer service price may be reviewed from time to time by the Commission to

determine whether it represents the regional wholesale electric market price, plus a reasonable allowance for retail margin. If the Commission has elected another electric supplier to be the standard offer service supplier as the result of the bidding process in § 1010(b)(2) of this title, the standard offer service price shall be the bid price.

d. In addition to the standard offer service price or the alternative electric supplier's supply price, each customer shall pay the separate applicable rates for transmission, ancillary, distribution, nuclear decommissioning and other services. Such rates shall not include any generation or electric supply costs. By September 1, 2004, DEC shall file a rate case quality cost of service study (consistent with the minimum filing requirements in effect on February 1, 1999) and a proposal to reset its regulated rates to be applicable at the end of the transition period. The Commission shall review these filings to determine the appropriate rates DEC may charge its customers for regulated services.

e. Customers who obtain transmission and/or ancillary services directly from the PJM independent system operator or from their electric supplier shall receive a credit against DEC's retail delivery rates equal to the then-applicable Federal Energy Regulatory Commission equivalent retail transmission and/or ancillary services rates paid by that customer or its electric supplier. (72 Del. Laws, c. 10, § 3.)

§ 1007. Stranded and transition costs for DEC.

For purposes of this section, the terms listed below shall be defined as follows:

(1) "Competitive transition charge" means the wires charge applied to the bill of every customer receiving electric supply through the distribution or transmission facilities of DEC, to allow DEC to recover its stranded costs and transition costs as determined by the Commission pursuant to this section.

(2) "Stranded costs" means DEC's electric generation related costs, including purchased power contract costs, incurred in meeting its public service obligations, that would be recovered under traditional cost of service regulation but which may not be recoverable in a competitive electric supply market,

including, but not limited to: Net generation plant investment costs, generation plant retirement costs, including nuclear plant decommissioning costs, spent nuclear fuel disposal costs, purchase power contract costs and any similar or related costs.

(3) "Transition costs" means the costs DEC incurs during the course of the transition to a competitive electric supply market that would be recovered under traditional cost of service regulation but which may not be recoverable in a competitive electric supply market, including, but not limited to: The costs of implementing a genuinely competitive retail market, personnel costs, the costs of purchasing, replacing or modifying systems, software and other equipment; the costs of any physical plan rendered no longer used or useful; and any other similar or related costs attributable to the transition to a competitive electric supply market.

(4) DEC shall be permitted to recover all reasonably incurred, nonmitigable stranded and transition costs. The amount and method of determining DEC's stranded and transition costs shall be decided by the Commission. The costs to be recovered shall be allocated in a manner that avoids, to the extent possible, interclass or intraclass cross-subsidization.

(5) The Commission shall establish procedures for periodic review of the costs recovered through the competitive transition charge. (72 Del. Laws, c. 10, § 3.)

§ 1008. Duties of electric distribution companies.

Each electric distribution company shall maintain its facilities and provide products and services which are safe, efficient, sufficient, adequate, and reliable. Each electric distribution company shall implement procedures to require all electric suppliers to deliver energy to the electric distribution company at locations and in amounts which are adequate to meet each supplier's obligations to its customers. (72 Del. Laws, c. 10, § 3; 74 Del. Laws, c. 73, § 3.)

§ 1009. Reciprocity.

Notwithstanding any other provision of this chapter, unless an electric utility, including a municipally-owned electric utility or a municipal electric company, has implemented a restructuring

plan that provides for retail competition in its Delaware service territory, such electric utility may not use the transmission or distribution facilities of a nonaffiliated electric utility to make sales to customers in such nonaffiliated electric utility's Delaware service territory; nor shall such electric utility own or receive, directly or indirectly, any economic interest in any entity which uses the transmission or distribution facilities of a nonaffiliated electric utility to make sales to customers in such nonaffiliated electric utility's Delaware service territory. (72 Del. Laws, c. 10, § 3.)

§ 1010. Electric distribution companies' obligation to serve customers.

(a) DP&L's obligation to serve. --

(1) During the transition period, DP&L shall continue to have the obligation to serve all customers in its commission-designated service territory, including the connection of customers, the delivery of electricity and the generation or acquisition of electric supply service for customers.

(2) Prior to the end of the transition period set forth in § 1004(a) of this title, the Commission shall determine who the standard offer service supplier in DP&L's service territory will be following the transition period, based on various factors including but not limited to price, reliability and overall quality of the electric supply service offered. In determining the standard offer service supplier for DP&L's service territory, the Commission may use an auction bidding process. The Commission shall promulgate rules and regulations for the bidding process and may:

- a. Negotiate directly with bidders;
- b. Aggregate various distribution areas to attract more bidders; or
- c. Choose more than 1 standard offer service supplier to provide standard offer service.

Nothing in the Commission's rules or regulations shall prohibit DP&L or its affiliates from participating in the bidding process for posttransition standard offer service. The Commission may also

require DP&L to continue to be the standard offer service supplier or to supply a portion of the standard offer service after the transition period. The standard offer service supplier shall provide standard offer service which is safe, efficient, adequate and reliable. The Commission may take appropriate actions to ensure that the standard offer service supplier provides such safe, adequate, efficient and reliable standard offer service.

(b) DEC's obligation to serve. --

(1) During the transition period, DEC, or affiliates thereof, shall have the obligation to serve all customers in its commission-designated service territory, including the connection of customers, the delivery of electricity and the generation or acquisition of electric supply service for customers.

(2) After the transition period, in addition to transmission and distribution service, DEC shall supply standard offer service, as determined in accordance with § 1006(b)(2)3. of this title, to customers who:

- a. Have no choice regarding electric suppliers,
- b. Do not choose another electric supplier, or
- c. Have contracted for electric supply service that is not delivered.

In fulfilling this obligation to provide standard offer service, DEC shall provide electric supply service which is safe, adequate, efficient and reliable. The Commission may take appropriate actions to ensure that DEC provides such safe, adequate, efficient and reliable standard offer service. The Commission may choose another electric supplier to provide standard offer service to the DEC's customers, through a Commission-supervised competitive bidding process or otherwise, only if DEC is unable to provide standard offer service in its service territory or if it is established, after notice and hearing, that the standard offer service rendered by DEC is inadequate or unreliable.

(c) The Commission shall promulgate rules and regulations governing the amount of notice that a customer who desires to return to the standard offer service supplier must provide, the

minimum amount of time that a customer must take service from a standard offer service supplier, and the amount of charges that may be assessed against a customer who leaves the standard offer service supplier and later returns to the standard offer service supplier, including the appropriate retail market price, which may be higher than the standard offer service price. (72 Del. Laws, c. 10, § 3; 74 Del. Laws, c. 73, §§ 4, 5.)

§ 1011. Metering and billing.

(a) The following provisions shall govern metering and billing for customers in DP&L's service territory:

(1) Each customer shall have the right to choose to receive separate bills from DP&L and from its electric supplier, or to receive a combined bill from either DP&L or its electric supplier, for electric supply, transmission, distribution, ancillary and other services, consistent with the regulations of the Commission.

(2) If the customer does not elect a billing option, DP&L shall be responsible for billing customers for all electric supply, transmission, distribution, ancillary and other services, regardless of the identity of the provider of electric supply service.

(3) Customer bills shall contain sufficient detail to enable the customer to determine the basis for all charges.

(4) During the transition period, DP&L shall continue to own all meters and perform all meter-reading functions. After the transition period, or earlier if requested by DP&L, the Commission may permit others to provide some or all of such metering functions on a competitive basis.

(b) The following provisions shall govern metering and billing for customers in DEC's service territory:

(1) DEC shall continue to bill each Customer for:

a. That customer's electric supply service, regardless of the electric supplier, and

b. Transmission, distribution, ancillary and other services.

(2) All customers in DEC's service territory shall continue to be members of DEC and the revenues for DEC's services shall continue to be treated as member revenue to DEC.

(3) DEC shall continue to own and operate meters and perform meter reading functions in its Commission-designated service territory. (72 Del. Laws, c. 10, § 3.)

§ 1012. Certification of electric suppliers.

(a) Certification requirements. -- Prior to doing business in Delaware, every electric supplier seeking to provide electric supply service to customers shall obtain a certificate from the Commission. The Commission shall promulgate rules and regulations governing the information that electric suppliers shall be required to provide and requirements to be satisfied in order to obtain such certificate. The failure by any electric supplier to comply with any of the requirements promulgated by the Commission shall result in penalties, including monetary assessments, suspension or revocation of the electric supplier's certificate, or other sanctions.

(b) Rules and regulations. -- The Commission may promulgate rules and regulations with respect to electric suppliers and electric supply service to protect customers after the implementation of retail competition, including those related to standardized customer information billing, service terms and conditions, dispute procedures, changing suppliers and standards for suppliers who offer environmentally-advantageous "Green Power" options, such as electricity generated from renewable resources, biomass, hydroelectric and other such generating sources. The Commission shall also require each electric supplier to provide disclosure, on a quarterly basis, of a uniform set of information about the fuel mix of electricity purchased by its customers, such as categories of electricity from renewable resources, coal, natural gas, nuclear, oil and other resources, or disclosure of a regional average. All electric suppliers shall consent to the jurisdiction of the Delaware courts for acts or omissions arising from their activities in the State. All electric suppliers are prohibited from using telemarketing to solicit customers.

(c) Fees and assessments. --

(1) Electric suppliers required to obtain a certificate to provide retail electric supply service shall pay an application fee of \$750.00.

(2) For purposes of §§ 114 (Charges and fees; costs and expenses of proceedings), 115 (Public safety; regulatory assessment; definition of revenue; returns; collection of assessment), and 116 (Delaware Public Service Commission Revolving Fund; deposit of moneys collected) of this title, an electric supplier shall be deemed to be a "public utility" as defined in § 102(2) of this title. (72 Del. Laws, c. 10, § 3.)

§ 1013. Market power remediation.

(a) On or after October 1, 1999, upon complaint or upon its own motion, for good cause shown, the Commission may conduct an investigation of the retail electric supply service market and whether the function of that market is being adversely affected by market power arising from the ownership or control of facilities and equipment used to provide electric supply service.

(b) If, as a result of an investigation conducted under this section, the Commission has reason to believe that market power in the relevant market under the Commission's jurisdiction is preventing retail electric customers in the State from obtaining the benefits of retail competition, the Commission may take remedial actions to mitigate the impact of such activities, including ordering divestiture. However, in the case of divestiture, the Commission may only order divestiture of generating assets of a public utility and only in an extreme situation and as a last resort measure. (72 Del. Laws, c. 10, § 3.)

§ 1014. Public purpose programs and consumer education.

(a) In separating the rates or prices for DP&L's services under § 1005(a) of this title, the Commission shall reassign to the separate transmission and distribution rates of each rate class from the total base rates \$0.000178 per kilowatt-hour to be deposited each month by DP&L into an environmental incentive fund effective on October 1, 1999. Such fund shall be known as

the "Green Energy Fund" and all moneys deposited into the Green Energy Fund shall be transferred in their entirety on the 1st day of July of each year to the State Energy Office to fund environmental incentive programs for conservation and energy efficiency in the State. The State Energy Office shall submit to the General Assembly by May 30 of each year a written accounting of moneys received from the fund during the previous year and how those moneys were used or disbursed during that year.

(b) The Commission shall further reassign to the separate transmission and distribution rates of each rate class from the total base rates \$0.000095 per kilowatt-hour to be deposited each month by DP&L into a low-income program fund effective on October 1, 1999. Such fund shall be administered by the Department of Health and Social Services, Division of State Service Centers and shall be used to fund low-income fuel assistance and weatherization programs within DP&L's service territory.

(c) The Commission shall establish a working group by June 1, 1999 comprised of representatives of the Commission, electric utilities, electric suppliers, the Division of the Public Advocate, environmental community, consumers, a member of the House of Representatives appointed by the Speaker of the House, a member of the House of Representatives appointed by the Minority Leader of the House, a member of the Senate appointed by the President Pro Tempore of the Senate, a member of the Senate appointed by the Minority Leader of the Senate and other interested parties to design and implement a consumer education program, including "Green Power" options, to prepare the citizens of Delaware for retail competition. The Commission shall direct the payment of up to a total of \$250,000 from DP&L and DEC (apportioned on the 1998 kw Delaware retail sales of each entity) for the purpose of providing customer education materials to citizens of Delaware in connection with retail competition.

(d) The Commission shall promulgate rules and regulations that provide for net energy metering for residential and small commercial customers who own and operate an electric generation facility that:

- (1) Has a capacity of not more than 25 kilowatts;

(2) Uses as its primary source of fuel solar, wind, hydro or other forms of renewable energy;

(3) Is located on the customer's premises;

(4) Is interconnected and operated in parallel with an electric distribution company's transmission and distribution facilities; and

(5) Is intended primarily to offset all or part of the customer's own electricity requirements. (72 Del. Laws, c. 10, § 3; 74 Del. Laws, c. 38, § 2.)

§ 1015. Procedures to govern commission proceedings.

(a) The Commission is authorized to enter such orders and adopt such regulations as may be needed to implement retail competition in accordance with this title. In order to allow the Commission to implement retail competition on the implementation dates set forth in § 1003(b) of this title, the Commission may waive procedures required by §§ 1131-1136 and §§ 10111-10128 of Title 29 with respect to proceedings or rulemakings authorized by this chapter which must be completed prior to the implementation dates. In case of such waiver, the Commission shall provide notice in such a manner to allow all interested and affected persons an opportunity to comment upon and participate in the proposed action or rulemaking and shall conduct such proceedings or rulemakings in accordance with the principles of due process and fundamental fairness. All regulations shall be published in the Delaware Register of Regulations. Such orders and regulations shall become effective on a date designated by the Commission consistent with the requirements of this chapter. Judicial review of such final orders or regulations shall remain available under § 10141 and § 10142 of Title 29.

(b) Matters relating to either DP&L's or DEC's restructuring plans may also be resolved by stipulation and settlement pursuant to § 512 of this title. (72 Del. Laws, c. 10, § 3.)

§ 1016. Change of control.

(a) The Commission's regulatory authority over DP&L and DEC shall not be affected by a subsequent change in stock

ownership of either utility. In approving any proposed merger, mortgage, transfer, issue, assumption or acquisition, the Commission shall, in addition to considering the factors set forth in § 215 of Title 26, take such steps or condition any transfer in such a manner as to insure that any successor will continue safe and reliable transmission and distribution services. Any proceeding reviewing a change of control or transfer shall conclude within 120 days from the date of filing, unless agreed to by the Commission and the applicant.

(b) Section 706 of Title 19 shall apply to any business combination, as defined therein, including without limitation, the sale, merger or acquisition of DP&L or of DP&L's generating plants or utility assets in this State. This shall mean, without limiting the provisions of Section 706 of Title 19, that:

(1) No such transaction shall result in the termination or impairment of the provisions of any labor contract negotiated by a duly certified or recognized labor organization, collective bargaining agent or other representative of the DP&L employees affected by such a transaction.

(2) Any such labor contract shall continue in effect with respect to all DP&L employees covered thereby until its termination date, unless otherwise agreed by the parties thereto or their legal successors;

(3) The sale, merger or acquisition of DP&L's generation or other utility assets in this State shall include a provision that the purchasing, merging or new entity shall offer to hire its initial union-represented employee complement from among DP&L's union-represented employees at the facilities being sold, merged or acquired at the time of the sale, merger or acquisition;

(4) The other party to the transaction shall bargain in good faith with the duly certified or recognized labor organization, collective bargaining agent or other representative that is the signatory to the labor contract referred to in paragraph (2) above in advance of the termination date of that labor contract for the purpose of extending or modifying such contract, as the parties thereto may agree.

(5) DP&L and the existing collective bargaining agents shall bargain in good faith to assure that any adverse effects on union-represented employees affected by such transaction are reasonably and satisfactorily mitigated. Such mitigation measures may include, but are not limited to, benefits such as training or re-training, severance pay and continued health care coverage. (72 Del. Laws, c. 10, § 3.)

§ 1017. Filing information with public advocate.

Nothing in this chapter shall be construed to limit or constrain in any way the right of the Division of the Public Advocate to receive information pursuant to § 8808(d)(5) of Title 29. (72 Del. Laws, c. 10, § 3.)

§ 1018. Electric cooperatives exempt from Commission supervision and jurisdiction.

Notwithstanding any other provision of this chapter, any electric cooperative, while exempt from the supervision and jurisdiction of the Commission pursuant to §§ 202(g) and 223 of this title, shall be exempt from all provisions of this chapter except as specified in § 224 of this title. (73 Del. Laws, c. 157, § 3.)

§ 1019. Enforcement, penalties, and sanctions.

(a) If after hearing, upon notice the Commission determines that any standard offer service supplier, electric supplier or electric distribution company has, as a matter of past or present fact arising after enactment of this section:

(1) Failed to comply with or violated any term or condition in any certificate, permit, or other instrument or authorization granted by the Commission;

(2) Failed to comply with or violated any of the provisions of this title or any rule, or regulation, promulgated by the Commission;

(3) Failed to comply with or violated any order entered by the Commission; or

(4) Materially failed to provide facilities, products or services which are safe, efficient, adequate or reliable.

Then such standard offer service supplier, electric supplier or electric distribution company shall be liable to the State for a civil penalty; provided however, that no penalty shall be assessed under paragraph (4) of this subsection unless the material failure is of the type that the standard offer service supplier, the electric supplier or electric distribution company knew or should have known as a result of standards, policies or procedures previously articulated by the Commission or through generally accepted industry standards or practices that its action(s) or inaction(s) would have been reasonably likely to cause the material failure. Such penalty shall not exceed \$5,000 for each violation, with the overall penalty not to exceed an amount reasonable and appropriate for the violation. Each day of noncompliance shall be treated as a separate violation.

(b) The Commission shall determine the amount of any penalty to be assessed under subsection (a) of this section. In making such determination, the Commission shall consider:

(1) The nature, circumstances, extent and gravity of the violation;

(2) The standard offer service supplier, electric supplier or electric distribution company's level of culpability, history of prior violations, and ability to pay;

(3) The good faith efforts of the standard offer service supplier, electric supplier or electric distribution company in attempting to resolve the violation after notification of noncompliance;

(4) In the case of an electric cooperative, the Commission shall not assess any monetary penalty that would adversely impact the financial stability of such an entity and any monetary penalty that is assessed against an electric cooperative shall not exceed \$1,000 for each violation, which each day of noncompliance shall be treated as a separate violation.

(c) Any penalty imposed under this section may be recovered by an action instituted in the name of the State in the Superior

Court. In such an action for recovery, the validity and amount of such penalty shall not be subject to review. In any such action, the State may recover the penalty, interest, costs and reasonable attorney's fees.

(d) If the Commission determines that a standard offer service supplier, electric supplier or electric distribution company will, as a result of present conditions or future threatened or contemplated action:

(1) Fail to comply with or violate any term or condition in any certificate, permit, or other instrument or authorization granted by the Commission;

(2) Fail to comply with or violate any of the provisions in this Title or any rule or regulation, promulgated by the Commission;

(3) Fail to comply with or violate any order entered by the Commission; or

(4) Materially fail to provide facilities, products, or services, which are safe, efficient, adequate or reliable;

Then the Commission may after hearing, upon notice, enter such orders to ensure compliance by the standard offer service supplier, electric supplier or electric distribution company. In exercising this authority, the Commission may enter immediate or prompt preliminary orders, to ensure compliance pending a final determination and order, in those instances where the public interest requires immediate or prompt action or relief. In its process for considering whether to issue a preliminary order, the Commission shall conduct an appropriate proceeding, upon appropriate notice, given the relief sought. If such a preliminary order is issued, the Commission shall thereafter, promptly schedule and begin the process to consider a final determination and order, which proceeding for final determination and order shall be conducted with notice and hearings consistent with the requirement of § 101 of Title 29.

(e) If after hearing, upon notice, the Commission determines that any standard offer service supplier, electric supplier or

electric distribution company has, as a matter of past or present fact occurring after enactment of this section:

(1) Failed to comply with or violated any term or condition in any certificate, permit or other instrument or authorization granted by the Commission;

(2) Failed to comply with or violated any of the provisions of this title or any rule or regulation, promulgated by the Commission;

(3) Failed to comply with or violated any order entered by the Commission; or

(4) Materially failed to provide facilities, products or services, which are safe, efficient, adequate or reliable.

Then the Commission may enter an order modifying, suspending or revoking any certificate, permit or authorization previously granted by the Commission to such standard offer service supplier, electric supplier or electric distribution company. Such remedy shall only be applied when the gravity of the violation warrants such relief. Revocation of a certificate, permit or authorization shall only be permitted, when there is a finding of a gross violation(s) or a pervasive pattern of conduct in violation of this section. Additionally, such remedy shall only be applied with respect to subdivision (4) of this subsection if the material failure is of the type that the standard offer service supplier, the electric supplier, or electric distribution company knew or should have known as a result of standards, policies or procedures previously articulated by the Commission or through generally accepted industry standards or practices that its action(s) or inaction(s) would have been reasonably likely to cause the material failure.

(f) In making the determination under subsection (e) of this section to modify, suspend or revoke any prior certificate, permit or authorization, the Commission shall consider:

(1) The factors listed in subsection (b) of this section;

(2) The ability of penalties and other sanctions to ensure compliance without the need to suspend or revoke; and

(3) The impact on the public interest by such modification, suspension or revocation.

(g) The penalty and other sanctions authorized by this section shall be in addition to any other penalties or sanctions authorized by law. The Commission may exercise the power granted in subsection (e) of this section in addition to the imposition of any penalty or other sanction imposed under this section or any other provision of the law. A final order with respect to any findings made or penalties or other sanctions imposed under this section shall be subject to the appeal procedures of § 510 of this title.

(h) The Commission may recover the costs of any proceeding instituted under this section in accordance with the provisions of §§ 114 and 1012(c)(2) of this title.

(i) This section shall apply to electric distribution companies, electric suppliers, DP & L and DEC, and any successors or assigns, except that this section shall not apply to electric distribution companies that are exempt from the jurisdiction of the Commission pursuant to § 202 of this title. (74 Del. Laws, c. 73, § 6.)

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